



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 70

RIN 2900-AO92

Veterans Transportation Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, a Department of Veterans affairs (VA) proposed rule concerning VA's direct transportation of persons for the purposes of examination, treatment, and care. Section 202 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012, as amended, authorized VA to carry out a program to transport any person to or from a VA facility or VA-authorized facility, for the purpose of examination, treatment, or care. VA is authorized to carry out this program until December 31, 2016. These regulations provide guidelines for veterans and the public regarding this program, hereafter referred to as the Veterans Transportation Service (VTS).

DATES: Effective Date: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: David Riley, Director, Veterans Transportation Program, Chief Business Office (10NB2G), 2957 Clairmont Rd., Atlanta, GA 30329-1647, (404) 828-5601. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A proposed rule concerning VA's direct transportation of persons for the purposes of examination, treatment, and care was published in the Federal Register on May 27, 2015. 80 FR 30190. This rule set forth proposed regulations for the VTS, a program where VA would directly transport veterans and other persons to or from VA or VA-authorized facilities for the purposes of examination, treatment, or care. Specifically, these regulations would define eligible persons, how they may apply for transportation benefits, and how VA would provide transportation, including such limitations as would be necessary for the safe and effective operation of VTS.

VA invited interested persons to submit comments on the proposed rule on or before July 27, 2015, and we received one comment regarding inconsistent use of and reference to the term "service dog" in proposed 38 CFR 70.71(b)(2) and 70.73(a). Section 70.71 relates to eligibility for VTS, and § 70.71(b)(2) as proposed would create VTS eligibility for enrolled veterans for the purpose of retrieval of, adjustment of, or training concerning medications, prosthetic appliances, or a service dog (as defined in 38 CFR 17.148). Section 70.73 relates to arrangement of and requests for transportation under VTS, and § 70.73(a) as proposed would require an eligible person that wanted to use VTS to provide VA with certain information to include any special needs that must be accommodated to allow for transportation (e.g. wheelchair, oxygen tank, service or guide dog). Unlike § 70.71(b)(2) as proposed, § 70.73(a) as proposed did not reference § 17.148 and therefore would not be limited by the meaning of the term "service dog" as it is defined in § 17.148. As noted by the commenter, the lack of consistency in referencing § 17.148 in both §§ 70.71(b)(2) and 70.73(a) creates

confusion as to whether a different meaning of the term “service dog” should be applied when determining VTS eligibility under § 70.71, versus when determining what is required to arrange or request VTS transport under § 70.73. As also noted by the commenter, a proposed revision to another VA regulation would define the term “service animal” in 38 CFR 1.218(a)(11) more broadly than the term “service dog” is defined in § 17.148. See 79 FR 69379. Since VA received this comment, § 1.218(a)(11) has been revised to include this broader definition of “service animal.” See 80 FR 49157. Ultimately, the commenter asserted that § 70.71(b)(2) should be revised to refer to the broader definition of “service animal” in § 1.218(a)(11).

We agree with the commenter that if a person is eligible for VTS and traveling with a service animal, then the broader definition of “service animal” in § 1.218(a)(11) should be used in VTS regulations. As noted by the commenter, if the broader definition of “service animal” in § 1.218(a)(11) was not used in VTS regulations, then VA may create conflicting situations where a person would be permitted to bring a “service animal” as defined in § 1.218(a)(11) into a VA facility, but would not be able to use VTS to be transported with such an animal to or from a VA facility. We therefore revise § 70.73(a) to add a reference to § 1.218(a)(11). This revision to § 70.73(a) addresses the commenter’s concern that VA’s definition of “service animal” in § 1.218(a)(11) should be applied consistently in the context of service animal access, whether the issue is a veteran getting into a VA facility with their service animal, or a veteran getting to the entrance of that VA facility with their service animal via VA transportation.

We do not, however, adopt the commenter’s suggestion to revise § 70.71(b)(2) to reference “service animal” as defined in § 1.218(a)(11). As stated earlier in this final

rule, § 70.71(b)(2) as proposed would create VTS eligibility for, among other things, transportation related to training a “service dog” that is recognized under § 17.148. If we revised § 70.71(b)(2) to replace the reference to “service dog” in § 17.148 with a reference to “service animal” in § 1.218(a)(11), we would instead create VTS eligibility for transportation related to training a “service animal” that is recognized under § 1.218(a)(11). However, this would conflict with VA’s service dog benefits standards in § 17.148, because § 17.148(c) has specific training requirements that are not present in § 1.218(a)(11). The commenter’s suggested revision to § 70.71(b)(2) would create scenarios where VA could provide VTS transport to support the non-specific training of a “service animal” that is recognized under § 1.218(a)(11), although VA could not recognize that training under § 17.148(c) for the purposes of providing service dog benefits. Such a practice could be interpreted as VA supporting non-specific training that is not recognized under § 17.148(c), and would erode VA’s training requirements in § 17.148(c). To avoid this conflict between VA standards related to service animal access in § 1.218(a)(11) and VA standards related to service dog benefits in § 17.148, we do not make the revision to § 70.71(b)(2) as suggested by the commenter.

We additionally clarify that VTS travel to receive training with approved service dogs under § 17.148 would only be approved travel under § 70.72(d). The types of authorized transportation under § 70.72(a)-(c) must be to or from VA or VA-authorized facilities. However, transportation to participate in “retrieval of, adjustment of, or training concerning...a service dog under § 17.148” (as stated in § 70.71(b)(2)) would not be to or from a VA or VA-authorized facility because VA does not conduct, facilitate, or pay for service dog training. While VA does recognize specific training under § 17.148(c) for

the purpose of paying service dog benefits, the training facilities themselves are not considered VA or VA-authorized facilities. Section 70.72(d) authorizes VTS transportation between locations other than VA or VA-authorized facilities, and such transportation may only be authorized when a VA clinician has determined that such transportation would be needed to promote, preserve, or restore the health of the individual. We reiterate from the proposed rule that § 70.72(d) is intended to authorize transportation that is the basis for promoting, preserving, or restoring the health of the individual, such as with aiding a visually impaired person to learn or update navigation skills, or to provide therapeutic day-trips or outings for individuals in VA residential treatment programs such as a VA Community Living Center. Under this analysis above as reiterated from the proposed rule, we interpret that transportation for “retrieval of, adjustment of, or training concerning...a service dog...” under § 70.71(b)(2) could be a type of approved transportation in § 70.72(d) if a VA clinician determined it was needed to promote, preserve, or restore health. We note that § 70.71(a) prevents individuals from claiming benefits under the VTS program and the beneficiary travel program for the same trip to obtain a service dog that is recognized under §17.148. We also note that in most cases we anticipate that individuals would use the beneficiary travel benefit instead of VTS to obtain a service dog that is recognized in § 17.148, because VTS travel resources cannot be relied upon to travel greater distances that typically necessitate air travel, for instance, and service dog training organizations recognized under § 17.148 are not located in every State.

We additionally clarify one issue that was not raised by the commenter related the transportation of guests using VTS resources. Section 70.71(i) permits guests to

travel with a veteran or servicemember if resources are available after providing services to eligible individuals in § 70.71(b)-(h). As permitted by § 70.71(i), guests may travel with a veteran or servicemember, but may not travel unaccompanied. We recognize that in some cases, a guest that travels with a veteran or servicemember to a VA medical facility may need to make a return trip from the VA medical facility unaccompanied, such as when a veteran or servicemember must be admitted to an inpatient treatment setting. In such a case, the guest of such a veteran or servicemember may make the return trip from the VA medical facility unaccompanied, because VA anticipated in any case completing a return trip for the guest as part of the travel permitted under § 70.71(i). We do not make any changes to the regulation text, however, because we interpret a return trip from a VA medical facility for an unaccompanied guest to be part of traveling with the veteran or servicemember under § 70.71(i).

Based on the rationale set forth here and in the proposed rule, VA is adopting the provisions of the proposed rule as a final rule with the changes to § 70.73(a) as described above.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to

conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule at § 70.73 contains new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). On May 27, 2015, in a proposed rule published in the Federal Register, we requested public comments on the new collections of information. 80 FR 30190. We did not receive any comments on the new collection of information. The information collection is pending OMB approval. Notice of OMB approval for this information collection will be published in a future Federal Register document. Until VA receives approval from OMB for the information collection, VA will not collect information associated with this rulemaking until OMB approves the information collection.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601- 612. This final rule directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of 5 U.S.C. 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it is not a significant regulatory action under Executive Order 12866 because it is likely to result in a regulatory action that may have an annual effect on the economy of \$100 million or more. VA’s impact analysis can be found as a supporting document at

<http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published from FY 2004 through fiscal year to date.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on January 28, 2016, for publication.

List of Subjects in 38 CFR Part 70

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-Veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: February 24, 2016.

Michael P. Shores,
Chief Impact Analyst,
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 70 as follows:

PART 70 – VETERANS TRANSPORTATION PROGRAMS

1. The authority citation for part 70 is revised to read as follows:

AUTHORITY: 38 U.S.C. 101, 111, 111A, 501, 1701, 1714, 1720, 1728, 1782, 1783, and E.O. 11302, 31 FR 11741, 3 CFR, 1966-1970 Comp., p. 578, unless otherwise noted.

2. Revise the heading for part 70 to read as set forth above.

§§ 70.1 through 70.50 [Designated as Subpart A]

3. Designate §§ 70.1 through 70.50 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Beneficiary Travel and Special Mode Transportation under 38 U.S.C. 111

4. Add subpart B to read as follows:

Subpart B—Veterans Transportation Service under 38 U.S.C. 111A

Sec.

70.70 Purpose and definitions.

70.71 Eligibility.

70.72 Types of transportation.

70.73 Arranging transportation services.

Subpart B—Veterans Transportation Service under 38 U.S.C. 111A

§ 70.70 Purpose and definitions.

(a) Purpose. This subpart implements the Veterans Transportation Service (VTS), through which VA transports eligible persons to or from a VA or VA-authorized facility or other place for the purpose of examination, treatment, or care.

(b) Definitions. For purposes of this subpart:

Attendant has the meaning set forth in § 70.2, and also means an individual traveling with a veteran or servicemember who is eligible for travel under VTS and requires the aid and/or assistance of another person.

Eligible person means a person described in § 70.71.

Guest means any individual the veteran or servicemember would like to have accompany him or her to an appointment but whose presence is not medically required.

Scheduled visit means that a VA beneficiary had an appointment that was made before she or he appeared at a VA, or VA-authorized, facility, or that a VA beneficiary was specifically authorized to appear at such facility on the date of the visit in order to obtain examination, treatment, or care. Examples of scheduled visits include: regular appointments for examination, treatment, or care; visits to undergo laboratory work; or doctor-recommended visits to clinics with open hours.

Unscheduled visit means a visit to a VA, or VA-authorized, facility for purposes of examination, treatment, or care that was not recorded in VA's scheduling system prior to the veteran's visit. For example, an unscheduled visit may be for a simple check of a person's blood pressure, for counseling, or for clinical intervention.

(Authority: 38 U.S.C. 111A, 501, 1714)

§ 70.71 Eligibility.

Except as provided in paragraph (j) of this section, VA facilities may provide VTS benefits to the following:

(a) Persons eligible for beneficiary travel. All persons eligible for beneficiary travel benefits in § 70.10 are eligible for VTS benefits (however, persons cannot claim benefits under both programs for the same trip or portion of a trip).

(b) Enrolled veterans. Regardless of a veteran's eligibility for beneficiary travel, VA may provide VTS to veterans enrolled in VA's health care system who need transportation authorized under § 70.72 for:

- (1) A scheduled visit or urgent care;
- (2) Retrieval of, adjustment of, or training concerning medications and prosthetic appliances, or a service dog (as defined in 38 CFR 17.148);
- (3) An unscheduled visit; or
- (4) To participate and attend other events or functions, as clinically determined by VA, for the purposes of examination, treatment, or care.

(c) Non-enrolled veterans. VA may provide VTS to veterans not enrolled in VA's health care system who need transportation authorized under § 70.72 for:

- (1) A compensation and pension examination;
- (2) An unscheduled or walk-in visit;
- (3) To apply for enrollment or health care benefits; or

(4) To participate and attend other events or functions, as clinically determined by VA, for the purposes of examination, treatment, or care.

(d) Servicemembers. VA may provide VTS to a member of the Armed Forces (including the National Guard or Reserve) traveling to a VA or VA-authorized facility for VA hospital care or medical services, including examination, treatment or care, a compensation and pension examination, or to enroll or otherwise receive benefits for which they are eligible.

(e) Prospective Family Caregivers and Family Caregivers. (1) VA may provide VTS to a prospective Family Caregiver who has applied for designation as a Family Caregiver under 38 CFR 71.25(a) when the travel is for purposes of assessment and training under 38 CFR 71.25(c) and (d).

(2) VA may provide VTS to a Family Caregiver (who is approved and designated under 38 CFR 71.25) of veteran or servicemember described in paragraphs (b) through (d) of this section to:

(i) Accompany or travel independently from a veteran or servicemember for purposes of examination, treatment, or care of the veteran or servicemember; or

(ii) Receive benefits under 38 CFR 71.40(b) or (c). For health care benefits provided under 38 CFR 71.40(c)(3), Primary Family Caregivers may travel using VTS for care only if it is provided at a VA facility through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) Inhouse Treatment Initiative (CITI).

(f) Attendants. VA may provide VTS to an attendant of a veteran or servicemember described in paragraphs (b) through (d) of this section.

(g) Persons receiving counseling, training, or mental health services. VA may provide VTS to persons receiving counseling, training, or mental health services under 38 U.S.C. 1782 and 38 CFR 71.50.

(h) CHAMPVA beneficiaries. VA may provide VTS to persons eligible for health care under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) under 38 CFR 17.270 through 17.278, provided that such care is being provided at a VA facility through the CHAMPVA Inhouse Treatment Initiative (CITI).

(i) Guests. For each veteran described in paragraph (b) or (c) of this section or member of the Armed Forces described in paragraph (d) of this section, a guest may travel with the veteran or servicemember provided resources are still available after providing services to individuals identified in paragraphs (b) through (h) of this section.

(j) Limitations on eligibility. Notwithstanding an individual's eligibility under this section:

(1) A person may be ineligible for transportation services if VA determines the person's behavior has jeopardized or could jeopardize the health or safety of other eligible users of VTS or VA staff, or otherwise has interfered or could interfere with the safe transportation of eligible persons to or from a VA facility or other place.

(2) Only one person may travel with an eligible veteran or servicemember as a Family Caregiver, attendant, or guest, unless a VA clinician determines that more than one such person is needed or would otherwise be beneficial to the examination, treatment, or care of the eligible veteran or servicemember. Family Caregivers traveling

for benefits under paragraph (e)(1) or (e)(2)(ii) of this section are not subject to this limitation.

(3) Persons under the age of 18 may accompany another person using VTS with the consent of their parent or legal guardian and the medical facility director or designee. VA transportation of children is not available if State law requires the use of a child restraint, such as a child safety seat or booster seat. In making determinations under this provision, the medical facility director or designee will consider:

- (i) The special transportation needs of the child, if any;
- (ii) The ability to transport the child safely using the available resources;
- (iii) The availability of services at the facility to accommodate the needs of the child;
- (iv) The appropriateness of transporting the child; and
- (v) Any other relevant factors.

(Authority: 38 U.S.C. 111A, 1714, 1720G, 1781, 1782, 501)

§ 70.72 Types of transportation.

The following types of transportation may be provided by VA facilities through VTS:

(a) Door-to-door service. VA facilities may use VTS to transport, on a scheduled or unscheduled basis, eligible persons between a VA or VA-authorized facility and their residence or a place where the person is staying. VA facilities may use VTS to transport eligible persons to and from a VA or VA-authorized facility and another

location identified by the person when it is financially favorable to the government to do so.

(b) Travel to and from designated locations. VA facilities may use VTS to provide transportation between a VA or VA-authorized facility and a designated location in the community on a scheduled basis.

(c) Service between VA facilities. VA facilities may use VTS to provide scheduled or unscheduled transportation between VA or VA-authorized health care facilities. This includes travel from one building to another within a single VA campus.

(d) Other locations. VA facilities may use VTS to provide scheduled or unscheduled transportation to and/or from a VA or VA-authorized facility or other places when a VA clinician has determined that such transportation of the veteran, servicemember, their attendant(s), or CHAMPVA beneficiary receiving benefits through the CITI program would be needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice, as defined in 38 CFR 17.38(b).

(Authority: 38 U.S.C. 111A, 501, 1718, 7301)

§ 70.73 Arranging transportation services.

(a) Requesting VTS. An eligible person may request transportation services by contacting the facility director or designee at the VA facility providing or authorizing the examination, treatment, or care to be delivered. The person must provide the facility director or designee with information necessary to arrange these services, including the

name of the person, the basis for eligibility, the name of the veteran or servicemember they are accompanying (if applicable), the time of the appointment (if known), the eligible person's departure location and destination, any special needs that must be accommodated to allow for transportation (e.g. wheelchair, oxygen tank, or service animal as defined in 38 CFR 1.218(a)(11)(viii)), and other relevant information.

Transportation services generally will be provided on a first come, first served basis.

(b) Travel without a reservation. Eligible persons who have provided the facility director or designee with the information referred to in the previous paragraph may travel without a reservation for the purpose of examination, treatment, or care when, for example:

- (1) The person is being discharged from inpatient care;
- (2) The person is traveling for an unscheduled visit, pursuant to a recommendation for such a visit by an attending VA clinician; or
- (3) The person is being transported to another VA or VA-authorized facility.

(c) Determining priority for transportation. When the facility director or designee determines there are insufficient resources to transport all persons requesting transportation services, he or she will assist any person denied VTS in identifying and accessing other transportation options. VTS resources will be allocated using the following criteria, which are to be assessed in the context of the totality of the circumstances, so that no one factor is determinative:

- (1) The eligible person's basis for eligibility. Enrolled veterans will receive first priority, followed in order by non-enrolled veterans; servicemembers; Family Caregivers; persons receiving counseling, training, or mental health services under 38 U.S.C. 1782

and 38 CFR 71.50; CITI beneficiaries; and guests. Persons eligible under more than one designation will be considered in the highest priority category for which that trip permits. VA will provide transportation to any attendant accompanying a veteran or servicemember who is approved for transportation.

(2) First in time request.

(3) An eligible person's clinical need.

(4) An eligible person's inability to transport him or herself (e.g., visual impairment, immobility, etc.).

(5) An eligible person's eligibility for other transportation services or benefits.

(6) The availability of other transportation services (e.g., common carriers, veterans' service organizations, etc.).

(7) The VA facility's ability to maximize the use of available resources.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0838.)

(Authority: 38 U.S.C. 111A, 501)

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